

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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ARTHUR L. HAIRSTON, SR.,	:	
Petitioner,	:	Civil Action No.
	:	07-5487 (JBS)
v.	:	
	:	<b>MEMORANDUM</b>
WARDEN GRONEOLSKY,	:	<b>OPINION</b>
Respondent.	:	
	:	

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SIMANDLE, District Judge:

This matter is before the Court upon motion of Petitioner Arthur L. Hairston, Sr., for reconsideration of this Court's Order of December 20, 2007 ("December Order"), which had dismissed Petitioner's Petition for lack of jurisdiction. Petitioner now asserts that this Court has proper jurisdiction over his Petition.

After reviewing Petitioner's allegations, this Court finds that:

1. On November 14, 2007, Petitioner submitted his Petition, pursuant to 28 U.S.C. § 2241. See Docket Entry No. 1.
2. On December 19, 2007, this Court issued a memorandum order (filed December 20, 2007) dismissing the Petition for lack of jurisdiction. See Docket Entry No. 2. The Court explained to Petitioner that

Congress established a procedure whereby a federal prisoner might collaterally attack his sentence in the sentencing court. See 28 U.S.C. § 2255; Davis

v. United States, 417 U.S. 333, 343-44 (1974); United States v. Hayman, 342 U.S. 205, 219 (1952). . . . "Motions pursuant to 28 U.S.C. § 2255 are the presumptive means by which federal prisoners can challenge their convictions or sentences that are allegedly in violation of the Constitution." Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002). This is because § 2255 expressly prohibits a district court from entertaining a challenge to a prisoner's federal sentence under § 2241 unless the remedy under § 2255 is "inadequate or ineffective" to test the legality of the petitioner's detention. See 28 U.S.C. § 2255; [accord] Cradle v. Miner, 290 F.3d 536 (3d Cir. 2002); In re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997). A § 2255 motion is inadequate or ineffective, authorizing resort to § 2241, "only where the petitioner demonstrates that some limitation of scope or procedure would prevent a § 2255 proceeding from affording him a full hearing and adjudication of his wrongful detention claim." Cradle, 290 F.3d at 538. The . . . Court of Appeals . . . recognized that, under certain very rare situations, a prisoner who cannot satisfy the gate-keeping requirements of § 2255 should be permitted to proceed under § 2241, which has neither a limitations period nor a proscription against filing successive petitions. See Dorsainvil, 119 F.3d at 251. [However,] the Dorsainvil exception . . . is satisfied only where petitioner "had no earlier opportunity to challenge his conviction for a crime that an intervening change in substantive law [has] negate[d]." Id. at 251. The court emphasized . . . that [Dorsainvil] was not intended to suggest that § 2255 would be considered "inadequate or ineffective" merely because a petitioner is unable to meet the stringent limitations or gatekeeping requirements of § 2255. Id. To the contrary, . . . § 2255 was "inadequate or ineffective" in the unusual circumstances presented in Dorsainvil because it would have been a complete miscarriage of justice to confine a prisoner for conduct that, based upon an intervening [law], may not have been criminal conduct at all. Id. at 251-52.

Docket Entry No. 2, at 4-7 and n. 5.

3. On January 8, 2008, the Court received from Petitioner his motion for reconsideration of the December Order ("Motion") alleging that his Petition should be within the Court's jurisdiction, because the Court of Appeals erred in its holding in Dorsainvil by crafting an exception too narrow, see Docket Entry No. 3, at 7-8, 11, and arguing that the exception should be enlarged by this Court to allow for § 2241 prosecution of quasi-§-2255 claims, currently barred from § 2241 review by the holding of Cradle. See id. at 8. In alternative, Petitioner maintains that his circumstances qualify his Petition for the Dorsainvil exception and, hence, allow a § 2241 review of his claims.<sup>1</sup> See id. at 8-9.
4. Procedurally, Local Rule 7.1(i) requires that a motion for reconsideration be "served and filed within 10 business days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge." L. Civ. R. 7.1(i). In the instant case, the Court entered its December

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<sup>1</sup> The remainder of Petitioner's Motion consists of numerous repetitions of the statements made in Petitioner's Petition, as well as of an abundance of rhetorical statements, such as "[t]here is one thing for certain and two things for sure[:] the one thing is [that Petitioner] belong[s] to God and [is] his Anoi[n]ted no matter what . . . court[s] think . . . [and, two, that Petitioner] will be delivered one day from this miscarriage of justice [pursuant to the Book of] John, Chapter 2[,] verses 26[-]29," Pet. at 1; the legal purpose of these repetitions and rhetorical statements is not entirely clear to this Court.

Order on December 20, 2008. See Docket Entry No. 3. Petitioner's Motion, however, was executed on January 4, 2008, that is, fifteen days after the entry of the December Order. See Mot. at 11-12. The Motion, therefore, is untimely and should be denied. However, this Court recognizes that it is especially important that the Court be lenient in enlarging the deadline for reconsideration where the original order under attack was the product of the preliminary review of a pro se application. The opportunity for the Court to take a second look at its dismissal order through reconsideration of something that may have been unclearly stated in such pro se application certainly advances fairness to pro se litigants like Petitioner.

5. Turning then to the substance of Petitioner's Motion, the Court finds that Petitioner has failed to sustain the burden imposed upon him by the standard governing motions for reconsideration. The "purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). Accordingly, a motion under Rule 7.1(i) may be granted only if: (1) an intervening change in the controlling law has occurred; (2) evidence not previously available has become available; or (3) it is necessary to correct a clear error of law or

prevent manifest injustice. See North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995).

6. Here, Petitioner asserts, as one alternative, that the circumstances of his claim are qualitatively analogous to those presented in Dorsainvil. Petitioner errs. In In re Dorsainvil, 119 F.3d at 251, the Third Circuit applied the "inadequate or ineffective" test to a § 2241 claim challenging a sentence on the basis of a change of substantive law that occurred after Dorsainvil's first § 2255 motion was decided. Specifically, Dorsainvil claimed that he has became actually innocent of "use of a firearm" after the Supreme Court held in Bailey v. United States, 516 U.S. 137 (1995), that this very crime, "use of a firearm," did not apply to the particular conduct involved in Dorsainvil's circumstances. The Supreme Court later ruled that Bailey applied retroactively under § 2255 to convictions that were final, see Bousley v. United States, 523 U.S. 614 (1998), and, in addition, encouraged collateral review by clarifying that "[d]ecisions of [the Supreme Court] holding that a substantive federal criminal statute does not reach certain conduct . . . necessarily carry a significant risk that a defendant stands convicted of 'an act that the law does [no longer] make criminal.'" Id. at 620 (1998) (quoting Davis v. United States, 417 U.S. 333,

346 (1974)). In light of the fact that, by the time of Dorsainvil's submission of his § 2241 claim, Dorsainvil was serving a prison term for the conduct that was no longer a criminal act altogether, under the holding of Bailey, the Court of Appeals for the Third Circuit created the carefully tailored Dorsainvil exception. The exception, however, is inapplicable to the case at bar. Here, Petitioner's underlying criminal conviction is based on three counts of distribution of crack cocaine and two counts of aiding and abetting the distribution of crack cocaine. See United States v. Hairston, 152 F. Supp. 2d 894, 2001 U.S. Dist. LEXIS 8802 (N.D. W. Va., 2001). Neither the act of distribution of crack cocaine, nor that of aiding and abetting the distribution of crack cocaine, has been re-qualified, by any intervening change in controlling law, into a non-criminal conduct. Therefore, Petitioner's circumstances fall outside the Dorsainvil exception. It follows that Petitioner's claims cannot proceed as 28 U.S.C. § 2241 action and, effectively, present nothing but a second and successive § 2255 application. See Cradle v. Miner, 290 F.3d 536.

7. Petitioner's alternative allegations (i.e., that the Court of Appeals erred by creating an exception in Dorsainvil too narrow in comparison to what Petitioner believes the

exception would have been in the event the Supreme Court had addressed the issue) are not properly before this Court. As the Court of Appeals clarified,

a lower court [is] bound by both the [higher court's] choice of legal standard or test and by the result it reaches under the standard or test. As Justice Kennedy has stated, courts are bound to adhere not only to results of cases, but also "to their explications of the governing rules of law." Our system of precedent or stare decisis is thus based on adherence to both the reasoning and result of a case, and not simply to the result alone. This distinguishes the American system of precedent, sometimes called "rule stare decisis," from the English system, which historically has been limited to following the results or disposition based on the facts of a case and thus referred to as "result stare decisis."

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Planned Parenthood of Southeastern Pa. v. Casey, 947 F.2d 682, 691-92 (3d Cir. 1991) (citations omitted), aff'd in part and rev'd in part on other grounds, 505 U.S. 833 (1992);<sup>2</sup> see also Briley v. City of Trenton, 164 F.R.D. 26, 29

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<sup>2</sup> The following factors must be present before a prior decision has stare decisis effect: (1) the decision must constitute a holding of the majority of the court and if a particular result is adopted by a clear majority of the court, it has absolute precedential effect in substantially identical legal and factual circumstances; (2) the decision must involve an issue of law; (3) similar factual situations must be involved; (4) an issue was actually determined by the decision; (5) the decision must be from the same court or from a court which the court applying stare decisis owes obedience. See 3-30 Moore's Manual-Federal Practice and Procedure §30.11, (2007); (citing, inter alia, City of Erie v. Pap's A.M., 529 U.S. 277, 285 (2000); Rappa v. New Castle County, 18 F.3d 1043, 1061 (3d Cir. 1994)). Since the Court of Appeals' decision in Dorsainvil meets all five factors, it has stare decisis effect and is binding on this Court.

(D.N.J. 1995) ("[where] the Supreme Court declined to rule with respect to [a certain issue], the doctrine of stare decisis compels this Court to apply the Third Circuit's . . . standard to [that issue]"). Consequently, this Court is bound by the Court of Appeals' decision in Dorsainvil, and Petitioner's allegations as to the allegedly undue narrowness of the Dorsainvil exception (as well as Petitioner's arguments based on such alleged narrowness of the exception) fall outside this Court's mandate and may be presented only to the United States Supreme Court.

CONCLUSION

For the reasons stated above, Plaintiff's motion for reconsideration of the Dismissal Order of December 20, 2007 will be denied, and the accompanying Order will be entered.

s/ Jerome B. Simandle

JEROME B. SIMANDLE  
U.S. District Judge

Date: March 5, 2008